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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Long-Term Telephone Number Portability )  
Tariff Filings )

CC Docket No. 95-116

John Staurulakis, Inc. )  
(Concord Telephone Company), )  
Tariff F.C.C. No. 1, Transmittal No. 36 )

**PETITION TO REJECT OR SUSPEND TARIFF**

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Procedural Order<sup>1</sup> issued on December 8, 1998, AT&T Corp. ("AT&T") hereby requests that the Commission reject, or suspend for one day and investigate the above-captioned tariff filing by John Staurulakis, Inc. on behalf of the Concord Telephone Company ("Concord") seeking to establish rates for local number portability query services and ("LNP") end-user surcharges.

The instant filing fails to comply with the Commission's LNP orders, and accordingly should be rejected.<sup>2</sup> At a minimum, the tariff raises substantial questions of lawfulness that cannot be dispelled in the highly abbreviated "streamlined" process afforded by this proceeding.

<sup>1</sup> Order, Long-Term Telephone Number Portability Tariff Filings, CC Docket No. 95-116, RM 8535 (released January 8, 1999) ("Procedural Order").

<sup>2</sup> A tariff is subject to rejection when it is prima facie unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. See,

(footnote continued on next page)

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List A B C D E

The limited review afforded by this streamlined proceeding and the other ILEC tariff reviews that are ongoing represent the Commission's first opportunity to scrutinize ILECs' proposed end-user surcharges. The Commission's recent LNP Cost Classification Order<sup>3</sup> provided significant new guidance to ILECs seeking to recover their costs of implementing LNP. In light of the importance and complexity of LNP cost allocation, that order recognized that "the need to distinguish between eligible LNP costs and general upgrade costs will require that LECs provide substantially more detail in filing their [LNP] tariffs than is customary when filing new services tariffs under the price caps recovery mechanism."<sup>4</sup> The Commission's caution is well-justified. In the earlier rounds of ILEC LNP query tariff filings and the investigations that followed them the ILECs failed even to make a serious attempt to carry their burden of proof.<sup>5</sup> As the LNP Cost Classification Order found, "the cost support submitted with the initial query service tariffs filed by several ILECs was inadequate to enable the Commission, or interested parties, to ascertain that only eligible LNP costs had been included in the end-user and query

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(footnote continued from previous page)

e.g., American Broadcasting Companies, Inc. v. AT&T, 663 F.2d 133, 138 (D.C. Cir. 1980); MCI v. AT&T, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. See AT&T (Transmittal No. 148), Memorandum Opinion and Order, FCC 84-421, released September 15, 1984; ITT (Transmittal No. 2191), 73 F.C.C.2d 709, 716, n.5 (1979) (citing AT&T (Wide Area Telecommunications Service), 46 F.C.C.2d 81, 86 (1974)).

<sup>3</sup> Memorandum Opinion And Order, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535 (released December 14, 1998) ("LNP Cost Classification Order").

<sup>4</sup> Id., ¶ 19.

<sup>5</sup> 47 U.S.C. § 204(a)(1) makes plain that the ILECs bear the burden of proving the lawfulness of their tariff filings.

service charges."<sup>6</sup> Accordingly, despite the long history of this proceeding, neither the Commission nor potential commenters have previously had a meaningful opportunity to evaluate ILECs' claimed LNP costs.

Against this backdrop, the Commission would be ill-advised to permit the instant tariff to take effect without the more complete review an investigation will allow.<sup>7</sup> As the January 29<sup>th</sup> Suspension Order observed in suspending and setting for investigation five ILEC LNP tariffs: "The rate proposals and the issues raised in the tariff filings for long-term number portability are novel and complex."<sup>8</sup> Indeed, by suspending almost every LNP query service and end-user surcharge tariff filed to date, the Commission implicitly has recognized that suspension is appropriate to ensure that any LNP query charges or end-user surcharges comply with its new cost recovery rules.

I. Concord Fails To Provide Sufficient Information To Permit Commenters To Evaluate Its Proposed LNP Query And Surcharge Rates

Potential commenters simply cannot meaningfully evaluate Concord's proposed rates because that ILEC failed to provide them with cost support information of any kind. Although AT&T understands that Concord did provide the Commission with some cost support

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<sup>6</sup> LNP Cost Classification Order, ¶ 19.

<sup>7</sup> The importance of such review is heightened because, under the Commission's current interpretation of § 402 of the 1996 Act, if the instant tariff is not suspended carriers taking service pursuant to the tariff will have no effective right to damages in the event the instant filing later proves inconsistent with the Commission's orders. See Report and Order, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, FCC 97-23 (released January 31, 1997) ¶¶ 18-23.

<sup>8</sup> Memorandum Opinion And Order, Long-Term Telephone Number Portability Tariff Filings of Ameritech, GSTC, GTOC, Pacific and Southwestern Bell, CC Docket No. 99-35 (released January 29, 1999) ("Suspension Order").

data, that ILEC apparently asserted that all such information that it offered was confidential, and therefore did not post it on the Commission's Electronic Tariff Filing System ("ETFS").

Accordingly, any party that wishes to evaluate the proposed rates has access only to a three-page D&J. Moreover, because the information Concord posted on ETFS did not include a phone or fax number at which its representative could be contacted, AT&T and other potential commenters were unable even to request cost support information from that ILEC pursuant to the Protective Order that the Commission has entered in this proceeding.<sup>9</sup> Concord also failed to comply with paragraph 7 of the Commission's Procedural Order, which requires ILECs to serve their LNP tariff filings on all parties that filed reply comments in the LNP cost classification proceeding. AT&T was not served with Concord's tariff.

In light of these myriad failings, the Commission should suspend and investigate Concord's tariff in order to ensure that it has the benefit of commenters' insights, and to discourage other ILECs from flouting the Commission's rules in similar fashion in future LNP tariff filings.

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<sup>9</sup> See Procedural Order, ¶ 8, Appendix A.

## II. Concord's Purported "Non-Recurring" Charges Are Improper

Concord seeks to impose a \$75 per month "nonrecurring" charge on carriers that do not pre-arrange for LNP query services. The sole explanation Concord offers for this charge is that it is "applicable for the installation of the service, for rearrangements of the service, or for billing of the service."<sup>10</sup> Carriers that prearrange for LNP query service would be charged this \$75 fee on a one-time basis. These proposed charges are plainly improper.

One of the issues that the Commission expressly designated for investigation in its upcoming review of ILEC LNP tariffs is the propriety of certain "non-recurring" charges proposed by Southwestern Bell Telephone ("SWBT") and Pacific Bell ("Pacific"), purportedly in order to set up billing for LNP query services.<sup>11</sup> The Designation Order found that SWBT and Pacific "have not provided adequate explanations or documentation to support a nonrecurring charge for their query services," and noted that the proposed "nonrecurring" charges in fact appeared "to be a recurring charge that Pacific and SWBT will impose for the purpose of encouraging companies to request prearranged queries, and not for the purpose of covering costs that result from providing default query services."<sup>12</sup>

Concord has provided no meaningful explanation of its proposed "nonrecurring" charges as to either default or prearranged queries. Although its proposed charges are lower than those proposed by SWBT or Pacific, that fact plainly does not amount to sufficient justification.

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<sup>10</sup> Concord Tariff No 1, proposed § 6.10.1(F).

<sup>11</sup> See Order Designating Issues For Investigation, Long-Term Telephone Number Portability Tariff Filings of Ameritech, GSTC, GTOC, Pacific and Southwestern Bell, CC Docket No. 99-35 (released February 26, 1999), ¶¶ 38-44 ("Suspension Order").

<sup>12</sup> Id., ¶ 43.

In the case of default query customers, Concord's proposed charges -- like SWBT's and Pacific's - are actually monthly levies on carriers that do not prearrange for queries. All or virtually all customers of an ILEC's "default query" services also will be purchasing exchange access from that ILEC on a regular basis in order to terminate interexchange calls in its territory. Thus, in most cases Concord already will have established an account with those carriers, and accordingly should not need to impose any non-recurring charges relating to billing those carriers for LNP-related services.

In all events, there is no basis to impose this so-called "nonrecurring" charge on a monthly basis. After a carrier has been billed during one month for default LNP query service, Concord cannot plausibly contend that it must set up billing from scratch in each subsequent month. Other ILECs have not proposed similar non-recurring charges -- indeed, Ameritech eliminated a similar charge from its tariff during a previous LNP query tariff investigation, observing that it had identified "ways to mechanically identify and bill for default traffic."<sup>13</sup>

### III. The Commission Should Clarify That It Will Suspend All Subsequent LNP Tariffs That Fail To Comply With Its Prior Orders

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Finally, AT&T urges the Commission to clarify, either in a separate order or as part of its order rejecting or suspending Concord's LNP tariff, that it intends to suspend and investigate future LNP tariff filings that fail to comply with the guidance the Commission has already provided in its Designation Order and in its prior suspension orders. For example, future ILEC tariffs that attempt to recover OSS costs related to systems for "ordering, provisioning,

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<sup>13</sup> Reply Comments of Ameritech, Number Portability Query Services, CC Docket No. 98-14, filed February 27, 1998, p. 14.

maintenance and repair, billing and 911 calls for ported numbers"<sup>14</sup> should automatically be suspended and set for investigation -- as prior ILEC tariffs seeking to recover such costs have been -- without the need for commenters to file a petition to suspend. Similarly, an ILEC tariff that proposes to charge for queries for calls to an NXX in which no number has yet ported should also presumptively be subject to suspension, as the Commission has already indicated that it intends to address this issue in the upcoming LNP tariff investigation.<sup>15</sup> AT&T urges the Commission to make clear that when future LNP tariffs raise these or other issues that the Commission has already considered and deemed to merit further review via a tariff investigation, the Commission will suspend and investigate them as a matter of course, without requiring commenters to file redundant petitions.

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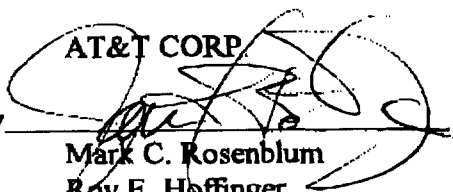
<sup>14</sup> Designation Order, ¶ 9.

<sup>15</sup> See id., ¶ 46.

**CONCLUSION**

For the reasons stated above, AT&T urges the Commission to reject or, alternatively, to suspend and investigate Concord's Transmittal No. 36.

Respectfully submitted,

AT&T CORP.  
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March 15, 1999



**CERTIFICATE OF SERVICE**

I, Rena Martens, do hereby certify that on this 15th day of March, 1999, a copy of the foregoing "Petition To Reject Or Suspend Tariff" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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Rena Martens

March 15, 1999